IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PEITION NO.3442 OF 2006

Jahangir R. Medora (Paymaster). ...Petitioner.
Versus
Madhusudan Shankar Ambike & Ors. ...Respondents.

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Mr. Sanjay Jain i/b. T.N. Tripathi & Co. for the Petitioner.
Mrs.Neeta Karnik for Respondent No.1..

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CORAM : DR. D.Y. CHANDRACHUD, J.

July 11, 2006.

P.C.:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the First Respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The First Respondent who is now aged about 74 years, has been a tenant of the Petitioner in respect of residential premises comprised in a block on the fifth floor, situated at Paymaster Block, Dhondi Road, Deolali Camp, Nasik. According to the First Respondent, the tenancy was created in 1969. There was some dispute in the Trial Court as to whether the tenancy did

date back to 1969 since the rent receipt produced on the record was of 30th October 1976. Be that as it may, it is an undisputed position that the First Respondent was a tenant of the Petitioner for over two decades.

3. The First Respondent instituted a suit before the Civil Judge, Junior Division at Nasik on 24th August 1999 claiming a declaration of his tenancy and directing the Defendants to the suit, including the Petitioner, to hand over possession of the premises. Briefly stated, the contention of the First Respondent was that in the month of October 1998, the First Respondent was required to travel to Mumbai for the treatment of a prostrate ailment and the premises had to be locked since the First Respondent was to leave together with his wife for Mumbai. On return, the First Respondent came to know of the fact that certain personnel belonging to the Army have been placed in the property by the Petitioner. There was an exchange of correspondence between the parities. The Trial Court has adverted to letters dated 1st January 1999 and 18th February 1999 issued by the First Respondent and to the replies of the Petitioner dated 16th February 1999 and 22nd February 1999. The Trial Court was moved for an interim mandatory order directing

the Petitioner to restore possession to the First Respondent. The application for interim relief was dismissed by the Trial Court by an order dated 20th February 2003. The First Respondent went in appeal and by an order dated 31st March 2006, the Additional District Judge at Nasik has found prima facie that the First Respondent was wrongfully dispossessed and that the surrounding circumstances do not support the contention of the Petitioner that the First Respondent had in fact, surrendered the tenancy on 30th July 1998.

4. Several important circumstances have been relied upon by the Additional District Judge, Nasik in holding that the First Respondent had established a case for the grant of a mandatory injunction at an interlocutory stage. First and foremost, the contention of the Petitioner, original Defendant No.1, is that on 30th July 1998, the First Respondent had voluntarily surrendered the premises. On 16th February 1999, a Caveat was filed by the First and Second Defendants to the suit and in the Caveat, the following averments and statements have been made:

> "1. The Caveators No.1&2 are the owner of the property bearing Room No.6 of serial no.332/1 situated within the limit of village Bhagur, Tal. & Dist. Nasik & within the

> limit of cantonment. The opponent is the tenant of the constructed one room of the building known as the paymaster block on Dhondi road, bearing Room No.6.
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> -2. The above said room has been allotted to opponent for his residence, but he is not residing in the said room since long and he is in no need of the same. The opponent is trying to misuse the said room and is trying to sublet the same, hence, the caveator issued him letter and thereupon the opponent may file false suit and get exparte injunction by misrepresenting the court in that event caveator will suffer irreparable loss hence the said caveat is being filed."

The contents of the Caveat would, therefore, show that even according to the First and Second Defendants, the Plaintiff continued to be a tenant of Room No.6 as on the date of the lodgment of the caveat which was on 16th February 1999. The statement in the Caveat would show that it is the case of the First and Second Defendants that the room was allotted to the First Respondent for his residence; that he was not residing therein and that he was likely to misuse the room by subletting the same. The contents of the Caveat are clearly inconsistent with the theory of the Petitioner that the First Respondent voluntarily handed over possession on 30th July 1998. The Petitioner in his caveat has averred that the First Respondent is a tenant of the premises and was trying to misuse them. Apart from this situation, the Appellate

Court has also adverted to the affidavits that were sought to be relied upon by the Petitioner of two residents. These affidavits were filed on 14th October 2002. The Appellate Court has noted that if possession had been handed over on 30th July 1998, then the names of those two persons would have been mentioned in the affidavit in reply filed at Exh.46. Thirdly, there is an absence of any document evidencing the surrender of tenancy. Fourthly, the Plaintiff, the First Respondent, had continued to remit the rent by Money Orders. Fifthly, the electricity bills for the period between February and June 1999 showed that even after the date of the alleged surrender, the electricity meter continued to remain in the name of the First Respondent. These are the grounds which weighed with the Appellate Court in reversing the judgment of the Trial Court.

5. The Trial Court had adverted to certain circumstances in para 7 of the judgment. The first circumstance was that the First Respondent-tenant has not specifically stated when the Petitioner obtained forcible possession of the suit premises. The Trial Judge even at the prima facie stage was in error in holding this as a circumstance against the First Respondent. The case of the First

Respondent was that in fact, he had left for Mumbai in October 1998 for medical treatment; that it was after he returned that he came to know of the circumstance that the Petitioner had taken over possession forcibly and in an unlawful manner. Hence, the inability of the First Respondent to plead a particular or specific date of the unlawful taking over of possession is duly explained by the circumstance that the First Respondent had left for Mumbai for medical treatment, together with his wife. The second circumstance which weighed with the Trial Judge was that a notice was issued by the First Respondent on 18th February 1999, and a period of five months elapsed between October 1998 and the date of the issuance of the notice. This again is a plainly erroneous line of prima facie reasoning on the part of the Trial Court. For one thing, the documentary material that has been adverted to in para 6 of the judgment included a letter as early as 1st January 1999 of the First Respondent. That apart, the Trial Court noted that it was after he returned upon receiving medical treatment that he came to know of the unlawful manner in which possession was taken over. Therefore, it would be erroneous even at an interlocutory stage to deny the First Respondent his claim for relief on the specious ground that from October 1998, the date when he had left for

medical treatment, a period of five months elapsed until the notice dated 18th February 1999. In so far as the two affidavits filed by the Petitioner are concerned, the Additional District Judge, has furnished cogent reasons why prima facie he was of the view that not much weightage could be given to these affidavits.

6. The facts of the case at the stage of prima facie evaluation would show that the First Respondent was a tenant in occupation in any event since October 1976 though it was his case that the date of inception of tenancy, in fact, dates back to 1969. Having regard to all the circumstances on the record including (i) The fact that there was an absence of any document of surrender; (ii) The fact that the Caveat that was lodged by the Petitioner as late as in February 1999 proceeded on the continuance of tenancy as on the date of the lodgment of the Caveat; and (iii) That this belied the claim of the Petitioner of a surrender of tenancy in July 1998; the Additional District Judge, cannot be said to be in error in reversing the order of the Trial Court. A strong prima facie case was made out for interim relief. The balance of convenience lies with the First Respondent who is a tenant for over two decades.

7. At the same time, as the suit is pending, I am of the view that while the said order of restoration of possession that has been passed by the Additional District Judge cannot be faulted, it would be necessary to safeguard the interest of the Petitioner herein as the landlord of the premises. At this stage, the interest of the Petitioner can be adequately safeguarded by directing that a Receiver be appointed of the premises and that the First Respondent be appointed as agent of the Receiver pending disposal of the suit without any security, but subject to the payment of monthly compensation equivalent to the rent of the premises. The Additional District Judge, shall accordingly, within a period of one week from today, nominate a competent officer to act as a Receiver of the premises. The Receiver shall appoint the First Respondent as his agent subject to the conditions which are recorded herein above. In the event that the Trial Court comes to the finding that the First Respondent had surrendered the tenancy, the Court Receiver shall, within a period of six weeks, thereafter, hand back possession to the Petitioner subject to such order that may be passed by a competent Court in a proceeding, if any, adopted by the First Respondent.

8. The Trial Court is requested to endeavour to dispose of the suit on or before 31st December 2006.

9. The Petition is accordingly disposed of.

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